54TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1114.

MAJ. CHARLES A. WOODRUFF.

APRIL 4, 1896.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. HANLY, from the Committee on Claims, submitted the following

REPORT:

[To accompany H. R. 574.]

The Committee on Claims, to whom was referred the bill (H. R. 574) for the relief of Maj. Charles A. Woodruff, having had the same under consideration, submit the following report:

The original act providing increased compensation to officers for length of service (section 15, act of July 5, 1838, 5 Stat. L., 258) provided—

> That every commissioned officer of the line or staff, exclusive of general officers, shall be entitled to receive one additional ration per diem for every five years he may have served or shall serve in the Army of the United States.

This statute was, by the Comptroller, early construed to require that the five years' service to entitle to the additional ration must be, first, service as a commissioned officer; second, service in Regular Army.

This construction was insisted upon by the accounting officers of the Treasury Department, and the question was not passed upon by the courts until the decision of the Supreme Court of the United States, March 11, 1889, in the case of the United States *v.* Watson (130 U. S. R., 80).

The act of July 15, 1870, now section 1262 of the Revised Statutes, provides that—

> There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service.

The officials of the Treasury Department held that the cadets at West Point were not in the Army within the contemplation of these acts, and that the first five years did not begin to run until after they entered the field.

Protests against this ruling were unavailing, and finally the case of Captain Morton was made up and presented to the Supreme Court of the United States, which held that this interpretation was wrong, and that it was the duty of the Treasury officers to compute that period, as the cadet was a soldier from the time of his entry at the Academy.

Armed with this decision, the officers of the Army presented their claim to the accounting officers of the Treasury, but those officials, who are always exacting in their scrutiny of claims, refused to give full effect to that decision, and allowed only a part of what the decision of the Supreme Court had shown was due.

Protest again was unheeded, and the calm official reply was: If you think you are right and the Treasury wrong, make up a test case and go to the courts. They took the advice of these officials, and a test case was presented to the Court of Claims in the name of Capt. M. F. Watson.

The only tribunal in which the Government may be sued is the Court of Claims, and its jurisdiction is limited to such amounts as may have accrued within six years of the commencement of suit in each particular case. The Army men are not very good lawyers, and so they did not realize that the six years in which they could resort to that court were rapidly slipping away, and, before Watson's case could be decided, would entirely elapse.

The Court of Claims decided that the Treasury decision was wrong and had not paid Captain Watson all that was due him, and so passed judgment in his favor and affirmed the principle contended for by claimants.

In 1889 the case of the United States *v.* Watson was appealed from the Court of Claims to the Supreme Court of the United States, where it was held broadly, under the act of 1838, that service as cadet at the Military Academy was service in the Army, and hence that the period of time spent at the Military Academy should have been counted in computing the longevity allowance of all officers of the Army entitled.

By this time the six years in which the majority of the claimants or their widows or heirs could maintain suit in that court had expired.

It has been frequently asserted that this subject received the consideration of the late Secretary Manning, to whom it was represented that, if the United States should appeal to the Supreme Court, and the judgment of the Court of Claims should be affirmed, it would be the duty of the Treasury to readjust these cases in conformity with the decision, but that by requiring claimants to go to the Court of Claims they would be barred by the statute of limitations governing that court. To all which he in substance replied: The case should be taken to the Supreme Court, and it will say what the law is and we will conform to it. To do otherwise would be repudiation, and the Government can not afford to set such an example of immorality.

And so, as before stated, the Government appealed the case to the Supreme Court, and three years later it affirmed the judgment of the Court of Claims. (See United States *v.* Watson, 130 U. S. R., p. 80.)

This decision of the Supreme Court of the United States gives an interpretation of the phrase "he may have served or shall serve in the Army of the United States," and makes service at the Military Academy service in the Army, removing the limitation to service as a commissioned officer which had been imposed by the accounting officers. This interpretation is put by the court on the ground that the cadets are a part of the Army, and not upon the ground that they are in any sense officers. The court quotes with approval from the decision in the Morton case, in which the point decided was that cadets were part of the Army. Service as an enlisted man is obviously service in the Army, and must, therefore, be included in the principle of the decision.

A few days before he went out of office Comptroller Butler followed the decision of the Supreme Court of the United States in the Watson case by allowing to General Grant the period of time spent at the Military Academy. The Grant case was followed by the case of General Rosecrans, also settled by Comptroller Butler.

In deciding that General Grant was entitled to the longevity rations, under the Watson decision, Comptroller Butler rendered an opinion, in which he reviewed the various laws and decisions which affected this matter. His conclusions are summarized as follows:

1. In computing the longevity rations for service between July 5, 1838, and March 1, 1867, inclusive, prior service as a cadet, as an enlisted man, or as a commissioned officer, and such service either in the Regular Army or the volunteer forces, as well

before as after April 19, 1861, shall be credited in the computation; and service in the Regular Army shall be counted for longevity in a subsequent service in the volunteers, and vice versa.

2. In computing longevity rations for service between March 2, 1867, and July 14, 1870 (both dates inclusive), service only as a commissioned officer of the Regular Army or of volunteers (after April 19, 1861), shall be counted. Service as an enlisted man or as a cadet, and service in volunteers prior to April 19, 1861, are excluded.

3. In computing the 10 per cent increase under the act of July 15, 1870, the same services shall be counted that are included in computations of longevity rations prior to March 2, 1867.

4. The act of June 18, 1878, does not restrict sections 1262 and 1292, Revised Statutes.

5. There is no statute of limitations applicable to these settlements.

Comptroller Gilkeson succeeded to the office of Second Comptroller and commenced by following the decisions of his predecessor, Comptroller Butler, and so decided the case of General Kilpatrick, involving a small credit for cadet service, which the record shows was allowed by Comptroller Gilkeson on July 2, 1889, but he afterwards changed his views and held in substance, among other things, that the long acquiescence in the rulings of the Department and neglect to either demand or sue in the courts was a bar to the claimants.

Comptroller Gilkeson concluded his opinion in these words:

I therefore direct that all claims for longevity pay under the Watson decision now pending in this office be disallowed, and that a copy of this opinion be sent to the Second Auditor, to the end that all like cases filed in his office be settled accordingly.

It has been contended that the accounts of this officer have been closed and finally adjudicated. The committee are of the opinion that this position is erroneous.

In the case of William Smith *v.* The United States (14 C. Cls. R., p. 118) the court said:

The primary fact in this case, upon which it must stand, if it can stand at all, is that accounts in the Treasury are never closed. In neither the legal nor mercantile sense of the term is an account between the Government and one of its officers ever "finally adjusted," nor is his official bond ever canceled or surrendered.

This practice is general, has been invariable since the organization of the Treasury, and is applicable to all officers as well as to those intrusted with the disbursement of the public funds. Thus, when it was determined in 1872 that judicial salaries were not subject to the deduction of the income tax, the judges of the Supreme Court, like disbursing officers, were able to have their accounts at the Treasury restated, and the new balance which appeared owing to them (that is to say, the money which had been withheld from their salaries) paid over to them.

The action of the Government officials with regard to judicial salaries was in some respects similar to the case under consideration.

Early in the war Congress imposed a tax of 3 per cent upon the salaries of all officers in the employment of the United States, and which the accounting officers of the Treasury construed to embrace judicial officers, and accordingly deducted the tax of 3 per cent from the salaries of the judges, and upon such action by the Treasury Department coming to the knowledge of the then Chief Justice of the United States, Hon. Roger B. Taney, the following action was taken, as shown by the action of the Supreme Court of the United States.

The Chief Justice addressed the following letter to the Secretary of the Treasury:

WASHINGTON, *February 16, 1863.*

SIR: I find that the act of Congress of the last session imposing a tax of 3 per cent on the salaries of all officers in the employment of the United States has been construed in your Department to embrace judicial officers, and the amount of the tax has been deducted from the salaries of the judges.

The first section of the third article of the Constitution provides that "The judicial power of the United States shall be vested in one supreme court and such inferior courts as Congress may from time to time ordain and establish. The judges of both the supreme and inferior courts shall hold their offices during good behavior, and

shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office."

The act in question, as you interpret it, diminishes the compensation of every judge 3 per cent, and if it can be diminished to that extent by the name of a tax it may in the same way be reduced from time to time at the pleasure of the Legislature.

The judiciary is one of the three great departments of the Government created and established by the Constitution. Its duties and powers are specifically set forth, and are of a character that it requires it to be perfectly independent of the other two departments. In order to place it beyond the reach and above the suspicion of any such influence the power to reduce their compensation is expressly withheld from Congress and excepted from their powers of legislation.

Upon those grounds I regard an act of Congress retaining in the Treasury a portion of the compensation of the judges as unconstitutional and void; and I should not have troubled you with this letter if there was any mode by which the question could be decided in a judicial proceeding.

But all of the judges of the courts of the United States have an interest in the question, and could not, therefore, undertake to decide it.

I am, however, not willing to leave it to be inferred from my silence that I admit the right of the Legislature to diminish in this or any other mode the compensation of the judges when once fixed by the law; and my silence would naturally, perhaps necessarily, be looked upon as acquiescence on my part in the power claimed under this act of Congress, and would be regarded as a precedent, establishing the principles that the Legislature may, at its pleasure, regulate the salaries of the judges of the courts of the United States, and may reduce their compensation whenever Congress may think proper.

Having been honored with the highest judicial station under the Constitution, I feel it to be more especially my duty to uphold and maintain the constitutional rights of that Department of the Government, and not by any act or word of mine leave it to be supposed that I acquiesce in a measure that displaces it from the independent position assigned to it by the statesmen who framed the Constitution; and in order to guard against any such inference I present to you this respectful but firm and decided remonstrance against the authority you have exercised under this act of Congress, and request you to place this protest upon the public files of your office as the evidence that I have done everything in my power to preserve and maintain the Judicial Department in the position and rank in the Government which the Constitution has assigned to it.

I am, sir, very respectfully, yours,

R. B. TANEY.

Hon. S. P. CHASE,
Secretary of the Treasury.

The officers of the Treasury Department, however, contended that the law should be enforced, and continued the deduction from the salaries of judicial officers until the income tax law was repealed. In 1869 Hon. E. Rockwood Hoar became Attorney-General, and soon thereafter rendered an opinion sustaining the contention of Chief Justice Taney, and when Hon. William A. Richardson became Secretary of the Treasury, in 1873, the matter was called to his attention, when by his order the law as declared by the Chief Justice of the Supreme Court and the Attorney-General of the United States was respected, and the accounts of the judges were reopened, readjusted, and resettlements made and the amount of the 3 per cent tax that had been wrongfully withheld stated, certified to, and paid over to them.

As late as 1888 the question was brought before the Court of Claims touching the amount that had been deducted from the salary of Mr. Justice Wayne, and from him withheld, in which a judgment was awarded to his legal representatives amounting to $1,128.97, the court holding that although the income tax of 1863 was for several years deducted from judicial salaries, it was in 1873 deemed unconstitutional, and the amounts that had been *withheld* were *refunded* by the Treasury; and in the same case, reported in 26 Court of Claims, page 274, the Chief Justice, Richardson, used the following language:

Valid claims can not be defeated by irregularities of the executive offices in mere matters of form.

It was also contended that—

A payment of a part of a debt is a final settlement of the claim.

This was declared to be erroneous in the case of Thomas H. Baird *v.* The United States (Devereaux Reports, p. 188). In referring to this question the court said:

Upon any principle known to the law this position is wholly untenable. It is easy enough to declare ex cathedra that it was a final settlement; but it is extremely difficult to imagine, in the absence of all evidence, what reasons can be urged for holding that the payment of a sum of money is of itself a discharge of a debt of a larger amount. A plea of payment of a smaller sum in satisfaction of a larger is bad, even after verdict, and unless we set at defiance every principle of law we can not hold that one party to a contract, without the assent of the other, can discharge his debt by the payment of a smaller sum than the amount due.

Again, in the case of The Cape Anne Granite Company *v.* The United States, the court said (see 20 C. Cls. R., p. 1):

When the Government maintains its own construction of the contract, neither conceding nor compromising, but compelling the other party to accept simply what it admits to be due, the transaction can not be upheld as a settlement or compromise, though a receipt in full be given.

It seems that there can not be any question but that the adjudication by the Supreme Court of the United States in the case of The United States *v.* Tyler (U. S. R., 105, p. 244), that of The United States *v.* Morton (U. S. R., 112, p. 1), and of The United States *v.* Watson (U. S. R., 130, p. 80) authorize and require the payment in the case under consideration. The committee can not concur in the opinion that a policy is correct which forbids the restatement of accounts made in error simply because a receipt had been given.

Charles A. Woodruff enlisted in Company A, Tenth Vermont Volunteers, June 5, 1862, and served with distinguished gallantry until August 18, 1865, when he was discharged for disabilities resulting from four severe wounds received by him during such service.

On July 1, 1867, he was appointed a cadet at the Military Academy, graduated, and was commissioned second lieutenant of infantry June 12, 1871. He was then entitled, under the law, to an increase of 10 per cent of his yearly pay immediately upon his graduation and being commissioned, having served more than five years, viz: From date of enlistment, June 5, 1862, to date of discharge, August 18, 1865; from date of entering Academy, July 1, 1867, to date of graduation therefrom, June 12, 1871; in all, a period of seven years one month and twenty five days in the Army of the United States, the time of enlisted men being included under the act of 1878.

The statute of limitation is a bar to the recovery of this sum in the Court of Claims under section 1069, Revised Statutes; therefore his only remedy is to bring the matter to the attention of Congress, so that it may give to him that which the disbursing officers of the Government are now paying to officers of the Army one year after their graduation from the Military Academy.

Congress has recently recognized the justice of these claims in several cases—recently in the passage of an act for the relief of Captain Pullman, during its last session.

Your committee, after full examination of the claim of Maj. Charles A. Woodruff, report the same back and recommend that the bill do pass.

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